IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3064 OF 1989

Jay Ambe Consumers Co-operative )
Society Ltd., Kaju Tekdi, )
N.B.Chawl, Ghatkoper, )
Bombay-400 084, through )
its Chairman, Shri Damji )
Shivji Furia. ) ..Petitioner.

Versus

1. Controller of Rationing, )
Bombay. )

2. State of Maharashtra, )
through the Minister for )
Food and Civil Supplies )
Department, Mantralaya, )
Bombay. )

3. Star Co-operative Consumers )
Society Ltd., S.K.Kapadi )
Chawl, 1/13, Parsiwadi )
Ghatkopar, Bombay-400 086. )

4. Smt.Sunita Chandrakant Jadhav)
L.G.975, Sukla Chawl, )
Jambhlipada, Asalpa Village, )
Ghatkopar West, )
Bombay-400 084. ) ..Respondents.

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Mr.Mukesh V. Aiya, Advocate for the Petitioner.
Mrs.M.Kajale, A.G.P., for Respondent Nos.1 & 2.

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CORAM : **F.I.REBELLO AND**
**SMT.V.K.TAHILRAMANI,JJ.**

DATED : **JUNE 05, 2006.**

(ORAL JUDGMENT: PER SMT.TAHILRAMANI,J.)

1. Heard Mr.Aiya learned Advocate for the petitioner and Mrs. Kajale learned A.G.P. for respondent Nos.1 & 2. None appears for respondent Nos.3 & 4 though served.

2. The petitioner has impugned the order dated 5.10.1989, whereby the allotment of ration shop to the petitioner came to be cancelled and instead it came to be allotted to respondent No.3. The petitioner is a Consumer Cooperative Society Ltd., registered under the Maharashtra Co-operative Societies Act, 1960. Its area of operation is Greater Bombay. In January, 1986, respondent No.1 i.e. Controller of Rationing, Bombay invited applications for allotment of ration shop at eighty different places in Greater Bombay. One of the said eighty places, was at item No.603 of the Public Notice inviting applications for a proposed ration shop at Kaju Tekdi, Asalpha village, Ghatkopar. In respect of Item No.603, sixteen persons including the petitioner applied. The spot fell within "E" region of Greater Bombay

Rationing Area. The two principal conditions prescribed for allotment of the ration shop were :

> " 1. The applicant should be in legal possession of shop premises area whereof should be minimum 18.581 sq. mtr. or equal to 200 sq.ft. or more.
>
> 2. The premises should be within the area and convenient to the card holders."

. The petitioner fulfilled the said conditions i.e. the area of the shop of the petitioner is about 236 sq.ft.. Moreover, the premises were within the specified area and convenient to the card holders.

3. The Deputy Controller, ‘E’ Region scrutinised the sixteen applications for allotment of ration shop under Item No.603 and submitted a report to the Controller of Rationing which was in favour of the petitioner. The Controller of Rationing issued the order of allotment of the said ration shop in favour of the petitioner. Thus the first respondent appointed the petitioner as an authorised ration shop and allotted to it ARS No.34-E-142, under authorisation dated

8.4.1987. Pursuant to the authorisation granted to the petitioner, the petitioner started the ration shop w.e.f.8.4.1987.

4. The respondent No.3 Star Co-operative Consumers Society Ltd., and Respondent No.4 Smt.Sunita Jadhav had also applied for allotment of the ration shop for the very spot as the petitioner. However, their applications came to be rejected by the Controller of Rationing.

5. Much after expiry of the period prescribed for revision against the order of allotment of the ration shop in favour of the petitioner, respondent Nos.3 & 4 filed Revision applications before the second respondent. The respondent No.2 by order dated 5.10.1989 cancelled the authorisation granted to the petitioner on the ground that it was not properly granted and allotted the same to respondent No.3. Being aggrieved by the said order, this Writ Petition has been preferred.

6. There is no dispute in relation to the fact

that the petitioner as well as respondent No.3 both fell within the priority category No.6 and Respondent No.4 fell within the priority category No.17, as per respondent No.1.

7. As stated earlier, sixteen persons including the petitioner had applied for allotment of the proposed ration shop. One of the persons, at Sr.No.15 was Smt.Rohini Dhumal who was the land-lady of the petitioner. The petitioner had taken the premises for the proposed ration shop from Smt.Rohini Dhumal on leave and licence basis. Smt.Rohini Dhumal had also applied for allotment of ration shop on the same address as that of the petitioner.

8. In the original order of the Controller of Rationing against the name of Smt.Rohini Dhumal who was at Sr.No.15, an endorsement was shown as below :

> "Applicant’s shop being beyond the limits, is inconvenient. Therefore, not recommended."

. However, admittedly a corrigendum came to be issued on 31.3.1987, wherein in respect of Smt.Rohini Dhumal, it is stated as under :

. Corrigendum:

. In the aforesaid order, endorsement at Sl.No.15 against the name of Smt.Rohini Dhumal:

> " Applicant's shop premises being beyond the boundary are inconvenient, therefore not fit for recommendation is made erroneously. Read the following endorsement in place thereof :
>
> " The applicant withdraw the application as per letter dated 15.10.1986."

9. In the revision the Hon'ble Minister observed that the petitioner had taken the premises proposed for its ration shop from Smt.Rohini Dhumal on leave and licence basis. On the same premises Smt.Rohini Dhumal had also applied for allotment of ration shop. The Controller of Rationing rejected the application of Smt.Rohini Dhumal on the ground that the premises proposed for authorised ration shop are beyond the advertised area and are inconvenient.

Despite that on the same premises the Controller of Rationing sanctioned a ration shop to the petitioner which is wrong and in violation of the Rules. Therefore, the Controller's order must be set-aside. In the said order, the allotment of the petitioner also came to be set-aside on the ground that the petitioner's society is from outside the advertised area and it is not a local society. It is further observed that the area of operation of second respondent (present petitioner) is Sakinaka, Kurla and the society has a kerosene and gas agency in the said area.

10. The first ground on which the allotment of the ration shop in favour of the petitioner came to be set aside i.e. the premises of the petitioner and that of Smt.Rohini Dhumal are the same and as it was held that the premises of Smt.Rohini Dhumal were beyond the limits, the petitioner could not have been allotted a ration shop which was to be conducted on the same premises. As far as this averment in the order is concerned, it is quite clear that a corrigendum which was issued on 31.3.1987 has not been taken

into consideration by the Hon'ble Minister. The application of Smt.Rohini Dhumal was actually not rejected by the Controller, but, she had withdrawn her application. Thus, this reasoning on which the allotment of the ration shop to the petitioner came to be rejected is clearly erroneous. It is clear that the Hon'ble Minister ignored the said corrigendum dated 31.3.1987 issued by the Controller.

11. As far as the second ground on which the allotment of the petitioner came to be cancelled i.e. his shop was outside the area of operation. The map which is annexed clearly shows that in actuality respondent No.3 is outside the area of operation and the premises of the petitioners are very much within the area of operation. Thus, this averment is also erroneous. As far as respondent No.3 is concerned, it is seen that the order of controller clearly shows that his shop was a Kaccha construction, hence it was inconvenient to card holders and therefore it was not recommended. As far as petitioner's shop is concerned the observations of the Controller are

as under :

> "The area of the Society Shop is 236 sft. Society has taken the said shop from Smt.Rohini Dhumal on leave and licence. Financial condition of the society is good. The society having complied with all conditions is eligible for allotment of the shop."

12. As far as the averment in the impugned order that the petitioner's society has a kerosene and gas agency, we find that there is no material on record to show that the petitioners society had any such agency. Thus, this averment is made without any material in support thereof on record. Thus, on this ground also, we find that the order deserves to be set-aside.

13. In addition it may be stated here that when respondent Nos.3 & 4 filed revisions against the order of the Controller dated 9.2.1987, none of the respondent Nos.3 & 4 had applied for interim

stay of the order of the allotment or interim injunction against the petitioner from continuing to operate the ration shop allotted to it, pending disposal of the said revisions. The said revisions came to be eventually heard and disposed of by the second respondent. The revision of respondent No.4 came to be rejected by order dated 5.10.1989. The revision filed by respondent No.3 came to be decided in its favour and the allotment of the petitioner came to be cancelled and it came to be allotted to respondent No.3.

14. As stated earlier being aggrieved by the said order, the petitioner preferred this writ petition. By order dated 25.10.1989, this Court granted stay to the impugned order dated 5.10.1989. Thereafter, rule came to be granted and interim relief was continued. On account of this, the petitioner has been continuously running the ration shop from 1987 till today. The petitioner has been successfully running the ration shop since 1987 otherwise the authorities would certainly have taken action against him. However, we found that there is no complaint

against the petitioner. This becomes an additional reason in his favour for allowing the petition.

15. In view of the above discussion, it is clear that the order dated 5.10.1989 cancelling the allotment of ration shop to the petitioner, is based on erroneous grounds and hence it deserves to be set-aside. Accordingly, the impugned order dated 5.10.1989 is set aside. Rule is made absolute in terms of prayer clause (a). However, there shall be no order as to costs.

[F.I.REBELLO,J.]

[SMT.V.K.TAHILRAMANI,J.]